

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri. M. S. Keny, State Chief Information Commissioner

Appeal No. 136/SCIC/2011

Ms. Bertha D'Mello e Daniel,
R/o. A-17/1, Goa University Campus,
Taleigao Plateau,
Goa – 403 206

.... Appellant

V/s.

1) Public Information Officer,
Goa University,
Taleigao Plateau,
Goa

... Respondent No.1.

2) First Appellate Authority,
Goa University,
Taleigao Plateau,
Goa

... Respondent No. 2.

Adv. Shri V. Daniels for Appellant.

Adv. Ms. A. Agni for Respondent No. 1.

J U D G M E N T
(27.07.2012)

1. The Appellant, Smt. Bertha D'Mello e Daniels, has filed the present Appeal praying that the Order dated 08.03.2011 passed by the First Appellate Authority be quashed and set aside; that the correct information as requested by the Appellant at query No. 3, 4 and 5 of the original application dated 25.11.2010 be provided; that in the event that information in respect of query No. 5 is not available/traceable, direction be issued to the P.I.O. to lodge an F.I.R. and hold inquiry with respect to the missing information/documents and that penalty be imposed on the erring officials as per law.

2. The brief facts leading to the present Appeal are as under:-

That the Appellant, vide an application dated 25.11.2010, sought certain information under Right to Information Act, 2005 (('R.T.I. Act' for short) from the Public Information Officer ('P.I.O.)/Respondent No. 1. That the Respondent No. 1, vide his reply dated 29.12.2010 failed to provide

the information requested for as set out in queries No.3, 4 and 5 in the said application. Being not satisfied the Appellant filed an appeal on 19.01.2011 under Section 19 of the R.T.I. Act. That the First Appellate authority ('F.A.A.)/Respondent No. 2 disposed off the appeal. That the Appellant vide letter dated 01.04.2011 addressed to the Respondent sought for the compliance of the order dated 08.03.2011. That vide letter dated 01.04.2011 addressed to the Appellant the Respondent enclosed a copy of the draft Memorandum and informed the Appellant that necessary steps to trace the relevant information at query No. 5 was under process. It is the case of the Appellant that the Respondent No. 1 has intentionally given misleading information to the Appellant in respect of query No. 3 when he answered "not available" in response to the Appellant's request at query No. 3. That the Respondent No. 1 has intentionally not provided the information in respect of query No. 4 when sought on 25.11.2010 and has only provided the information on 01.04.2011 after Appellant moved an application for compliance of the order. Being aggrieved by the order of the First Appellate Authority the Appellant has preferred the present Appeal on various grounds as set out in the Memo of Appeal.

3. The case of the Respondent No.1 is fully set out in the reply which is on record. In short it is the case of the Respondent No. 1 that the information was sought by the Appellant vide letter dated 25.11.2010 and the letter dated 29.12.2010 would reveal that certified copies as prayed for at item No. 1, 2, 4, 6, 7, 8 had been enclosed and the certified copy of the approval of Vice-Chancellor to issue memo to Asst. Registrar (Legal), was stated to be not available, so also certified copy of the notings that is not disclosed. That it has not been disclosed as to how the information is incomplete, incorrect and misleading. That the Enclosure-III does not at all mention that there is any separate note dealing with the draft memo. That if the information is not available there can be no mandate to the authority to provide the same. That if the documents are not traceable the authority is not bound to set out what steps are taken to trace the documents unless the Appellant is able to justify that documents are not provided inspite of being available to the authority. That no particulars of harassment have been furnished in the Appeal Memo. That the grounds urged in the Appeal Memo

are without any merit and not available to the Appellant. According to Respondents appeal is liable to be dismissed.

4. Rejoinder filed by the Appellant is on record. The sur-rejoinder filed on behalf of Respondent is on record.

5. Heard the arguments. The learned Adv. Daniels argued on behalf of Appellant and the learned Adv. Ms. A. Agni argued on behalf of Respondent/P.I.O. Both sides advanced elaborate arguments.

6. I have carefully gone through the records of the case and also considered the arguments advanced by the learned Advocates of the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is seen that by application dated 25.11.2010 the appellant sought certain information consisting of 8 points/items that is Sr. No. 1 to 8. By reply dated 29.12.2010 the Respondent No.1/P.I.O. furnished the information. Being not satisfied the Appellant preferred an appeal before the First Appellate Authority/Respondent No.1. It was contended that information provided is incorrect, incomplete and misleading pertaining to query No. 4 and 5. It was also prayed that information in respect of query No. 3 and 4 be provided. By order dated 08.03.2011 the F.A.A. observed as under:-

“After going through the appeal of the appellant and subsequent rejoinder and the reply filed by the respondent alongwith correction submitted followed by subsequent arguments by both the Appellants and Respondent the F.A.A. has arrived to the conclusion that:

(i) There is no apparent malafide intention on the part of respondent in submitting the information as requested by Appellant.

(ii) Out of the eight queries of the Appellant the respondent has submitted the information for 6 queries in all for which appellant was satisfied. However the Appellant was not satisfied with response to query No. 3, 4 and 5.

(iii) With respect to query No. 3 the respondent has informed that the information is not available which is contested by the Appellant. However, it appears that by ipso facto the information is not available

since the order was issued by the Registrar himself with respect to query No. 4 although there is reference to the existence of a separate noting, the draft memorandum submitted no by P.I.O. implies that a separate noting other than the marginal remark by concerned officer on the said memorandum is not available.

P.I.O. is directed to provide to the appellant the certified copy of the draft memorandum and also take steps to trace the relevant information sought by the Appellant at query No. 5.

The Appeal, therefore, is partly submitted and disposed off.”

The grievance of the Appellant is mainly on item at Sr. No. 3, 4 and 5.

7. Coming to item No. 3 which is as under:-

“3. Provide certified copy of the approval of the Vice-Chancellor to issue Memo to Assistant Registrar-Legal in the year 2009.”

Reply:

“Not available.”

It is to be noted here that in terms of the provisions of the R.T.I. Act a citizen is entitled to seek disclosure of information that is available in a material form with a public authority, that is, the information is available in any file or document and the like. A combine reading of Section 2(f), 2(i) and 2(j) of the R.T.I. Act would show that a citizen is entitled for disclosure of information which is in material form with a public authority and “information” and right to seek do not include opinions, explanation, etc.

F.A.A. states about query No.3. If the same is not available then certainly it does not exist. The Respondent No.1 too states that it is not available. If the same is not available then there is no obligation to furnish the same. R.T.I. Act does not make it obligatory on the part of the public Authority to create information for the purpose of dissemination. In view of this there is no reason to disbelieve the P.I.O. that the document in question is not available.

Regarding item/Sr. No. 4. It appears that copy of draft memorandum is furnished. In para 9 of the Memo of Appeal it is mentioned that “.....

and has only provided the information on 01.04.2011 after appellant moved an application for compliance of order

If the same was not available the same would be furnished at the initial stage only. It is unfortunate that it was produced subsequently. As pointed above the P.I.O. has to furnish the information as available or 'held' by public authority. Not providing the information when it is held by public Authority, leads to harassment which is legally impermissible and socially abhorring. In any case the same is furnished.

8. Coming to query No. 5/item at Sr. No. 5 which is as under:-

“5. Provide certified copy of the note dated 12.01.2009 bearing reference No.2/Legal/09/192 submitted to the Office of Registrar and other relevant documents if any, which may have been processed by the concerned in view of the note dated 12.01.2009 and also provide the information as to the action taken.”

Reply:

“5. Not traceable.”

I have perused the order of F.A.A. as well as Memo of Appeal and reply of Respondent No.1 on this count. According to Respondent it is not traceable. The document referred appears to be of recent origin, however, the same is not traceable. How and in what way it is missing is not explained and/or stated. If this contention that information cannot be furnished as the same is not traceable, is accepted then it would be impossible to implement R.T.I. Act. However, it is also a fact that if information is not traceable the same cannot be furnished.

It is to be noted here that it is obligatory for the public Authority to maintain the records properly, duly catalogued and indexed so as to facilitate the right to information under R.T.I. Act.

Advocate for Appellant also mentioned Section 4(1).

Needless to say that implementation of sub-Section (1) of Section 4 of the R.T.I. Act is the mandate of law and it is to be done by all the public authorities concerned. The importance of suo motu disclosures under Section 4(1)(b) is of great importance as maximization of such disclosures would result in minimization of recourse to Section 6(1) of the Act thereby saving time, energy as well as resources of both public authorities and

information seekers. Public authorities should take urgent steps in that direction.

9. Since document is of the year 2009 and the same is not traceable a thorough inquiry is to be made. Public Authority like the Respondent is the custodian of documents and as such a thorough inquiry is to be made regarding the same. In my view University Authorities should hold proper inquiry and bring to book the delinquent officer/official.

10. In view of the above, the Respondent No.1 should be given an opportunity to search the said document/information and to trace the same. At the same time if the same is not traceable proper inquiry is to be held. Hence, I pass the following Order:-

ORDER

Appeal is partly allowed. The Respondent No. 1 is directed to trace the said document/information at **item/Sr. No. 5 within 15 days from the receipt of this order** and report compliance.

In case the same is not traced within the said period of 15 days the Head of the Institution/Public Authority to appoint a competent officer/person other than P.I.O. and F.A.A. to conduct an inquiry regarding missing of the said document/information and to fix responsibility for misplacement/missing of the same and initiate action against the delinquent officer/officials including lodging of F.I.R. and/or suitably penalized as per law. **The inquiry to be completed as early as possible preferably within 2(two) months.**

The Appeal is accordingly disposed off.

Pronounced in the Commission on this **27th day of July, 2012.**

Sd/-
(M. S. Keny)
State Chief Information Commissioner

